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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP MICHAEL PATRICK,

Defendant and Appellant.

F056848

(Super. Ct. No. RF005496A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Lee P. Felice, Judge.

Jackie Menaster, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Phillip Michael Patrick appeals from a judgment entered pursuant to his guilty plea after the trial court denied his motion to suppress evidence. The sole issue on appeal is whether defendant was on parole when officers conducted a warrantless parole search of his home. We conclude he was. The trial court therefore properly denied the motion to suppress, and we affirm.

### **PROCEDURAL SUMMARY**

On October 29, 2008,<sup>1</sup> defendant was charged with various drug-related offenses. Pursuant to Penal Code section 1538.5, he filed a motion to suppress evidence found during a parole search of his home, on the ground that he was not on parole at the time of the search. Following a hearing, the trial court concluded defendant was on parole at that time, and it denied the motion. Defendant then pled guilty to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) on the condition that he be placed on Proposition 36 probation. The remaining two counts were dismissed.

### **FACTS<sup>2</sup>**

As a prisoner and then as a parolee, defendant participated in a drug treatment program (the 1453 Program). As a part of the 1453 Program, defendant entered residential aftercare following his release from prison. In late September, defendant presented his parole agent with a certificate of completion of the 1453 Program. The agent went back to his office and contacted the aftercare provider, who then sent the agent paperwork stating defendant had been in the 1453 Program but the provider could not find documentation of his completion. Consequently, the agent informed defendant that he was not discharged from parole at the time. The agent told him it was “out of [his] hands” and defendant needed to file an appeal form with the Board of Prison Hearings.

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<sup>1</sup> All dates refer to 2008 unless otherwise noted.

<sup>2</sup> These facts are taken from the suppression hearing.

On October 8, officers conducted a parole search of defendant's residence and collected incriminating evidence.

At the suppression hearing, defendant's parole agent explained the 1453 Program this way:

“[P]rior to the release [from prison], [the prisoner] sign[s] documentations with the Board of Prison Hearings saying that [he] agree[s] to go through the 1453 program. Then [he is] discharged from the prison to the community. [He is] discharged ... straight into [an aftercare] treatment residential facility from the prison. And [he] will spend six months in that facility. And upon successful completion, the Board of Prison Hearings comes in, conducts a hearing after that six months. The paperwork is faxed to the agent. And from there, the agent prepares discharge paperwork and submit[s] it ... back to the Board of Prison Hearings. And then the [parolee] is actually discharged.”

The agent also testified that his records contained no evidence that the Board of Prison Hearings acknowledged defendant's participation in the 1453 Program or held a hearing to discharge defendant from parole. According to the agent, presentation of a certificate of completion by the parolee does not discharge him from parole. The agent's records established that defendant was on parole at the time his residence was searched.

### **DISCUSSION**

Defendant does not challenge the legality of parole searches, he simply contends he was not on parole at the time of the search on October 8 because he had submitted a certificate of completion of the 1453 Program to his parole officer. He asserts that, according to the plain language of Penal Code section 2933.4, his completion of the 1453 Program operated to discharge him from parole. He explains “[t]he statute does not contemplate a review process or an appeal process.” The only precondition to discharge is successful completion of the 1453 Program. “No further ‘review’ process is contemplated or permitted by the statute.” Accordingly, defendant claims he was entitled to be discharged at the very moment he proved he had successfully completed the

1453 Program. As he puts it, “as a matter of law [he] was discharged from parole” when he presented the certificate. We disagree.

When we review a trial court’s ruling on a suppression motion, we defer to the trial court’s express or implied findings of fact if they are supported by substantial evidence, but we must independently determine the relevant legal principles and apply those principles to the trial court’s findings of facts to determine whether the search was constitutionally reasonable. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Middleton* (2005) 131 Cal.App.4th 732, 737-738.) Here, we independently review the relevant legal principles of when and how discharge from parole occurs under the 1453 Program, and the application of those principles to the facts of this case.

The 1453 Program, so called because it was created by Senate Bill No. 1453 (2005-2006 Reg. Sess.), provides for early discharge from parole. The Legislative Counsel’s Digest explains that “certain inmates under the custody of the department, after successful completion of an inprison drug treatment program, upon parole, shall, whenever possible, be entered into a residential aftercare drug treatment program. If the parolee successfully completes 150 days of residential aftercare, he or she shall be discharged from parole, as specified.” (Legis. Counsel’s Dig., Sen. Bill No. 1453, Stats. 2006, ch. 875 (2005-2006 Reg. Sess.) Sept. 30, 2006.) The 1453 Program is governed by Penal Code section 2933.4 and California Code of Regulations, title 15, section 3999.4.

Penal Code section 2933.4, subdivision (b), enacted in 2006, provides: “As a condition of parole, if the inmate successfully completes 150 days of residential aftercare treatment, as determined by the Department of Corrections and Rehabilitation and the aftercare provider, the parolee shall be discharged from parole supervision at that time.” Contrary to defendant’s argument, the plain language of the statute demonstrates that successful completion does not occur by operation of law when the program is completed or the certificate presented, but is “determined by the Department of Corrections and Rehabilitation and the aftercare provider.” (Pen. Code, § 2933.4., subd. (b).)

Furthermore, California Code of Regulations, title 15, section 3999.4, which implements the 1453 Program (and which neither party cites), states that “[p]arolees who successfully complete the 150-day residential aftercare program shall be discharged from parole at that time. Successful completion will be determined by the Aftercare Successful Completion Assessment Team (ASCAT). ASCAT will be comprised of the DARS PA II [Division of Addiction and Recovery Services Parole Agent II], Treatment Provider, SASCA [Substance Abuse Services Coordination Agency] Advocate/Case Manager, and whenever possible AOR [Agent of Record].”

California Code of Regulations, title 15, section 3999.4, details the responsibilities of various actors during the 1453 Program. For example, “[o]n or about the 140th day, the DARS PA II and the after care provider staff shall conduct a case review to evaluate for ‘successful completion.’ Documentation of the review will be forwarded to the AOR/unit supervisor for their review.” The DARS PA II must also “[p]rovide a copy of the certificate of ‘successful completion’ to the AOR no later than the 145th day. [¶] ... [¶] Upon receipt of the certification for successful completion from the DARS PA II, the AOR shall complete an Activity Report (AR) recommending close interest in case pursuant to [Penal Code] Section 2933.4[, subdivision] (b) and submit the AR to the unit supervisor for review. [¶] ... [¶] The unit supervisor will review and submit the AR to DAPO [Division of Adult Parole Operations] Case Records to post the discharge action pursuant to [Penal Code] Section 2933.4[, subdivision] (b). [¶] ... [¶] Upon receipt of the AR, Case Records will discharge parolee pursuant to [Penal Code] Section 2933.4[, subdivision] (b).”

As these authorities plainly establish, presentation of a certificate of completion by the parolee does not result in an immediate or automatic discharge from parole under the 1453 Program. Formal procedures are required to effect the discharge. There was no evidence in this case that these procedures were performed and no evidence that defendant was ultimately discharged from parole. Thus, at the suppression hearing, the

prosecution met its burden of proving that defendant was on parole when the search was conducted and therefore the warrantless search was justified as a valid parole search.<sup>3</sup>  
(See *People v. Pearl* (2009) 172 Cal.App.4th 1280, 1283.)

**DISPOSITION**

The judgment is affirmed.

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Kane, J.

WE CONCUR:

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Ardaiz, P.J.

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Vartabedian, J.

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<sup>3</sup> Having so concluded, we need not consider the good faith exception to an otherwise unlawful search.